

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

ITC No.133 of 1994
Date of decision:30.10.2006

The Commissioner of Income Tax, Jalandhar

....Petitioner

versus

M/s. Kulwant Singh & Co., Jalandhar

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.
Mr. Rakesh bakshi, Advocate, for the respondent.

JUDGMENT:

This petition has been filed by the revenue for a direction to the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, 'the Tribunal') to refer following questions of law for the opinion of this Court in ITA No.1358(ASR)/1992, in respect of assessment year 1989-90:-

- “i) Whether, on the facts and in the circumstances of the case, the Ld. ITAT is right in law in holding that the Assessing Officer was not justified in framing the assessment under section 144 of the Income Tax Act, 1961?
- ii) Whether, on the facts and in the circumstances of the case, Ld. ITAT is right in law in holding that the three vends could not be treated as one business belonging to four partners jointly?
- Iii) Whether, on the facts and in the circumstances of the case, the Ld. ITAT is right in law in deleting the addition of Rs.89,772/- made by the AO in the trading account, by applying the provisions of section 145(2) of IT Act, 1961 confirmed by the CIT(A)?
- iv) Whether, on the facts and in the circumstances of the

case, Ld. ITAT is right in law in deleting the addition of Rs.3000, Rs.88000/- and Rs.8,29,250/- made by the AO on account of unexplained investment of the partners in the three vends and confirmed by the CIT(A)?

- v) Whether on the facts and in the circumstances of the case, Ld. ITAT is right in law in holding that capital contribution of the partners has no link with the profit sharing ratios?”

The assessee was a partnership firm, running the business of liquor licence L-2 (IMFL), Jalandhar. Return of the assessee was accepted under section 143(1)(a) of the Income Tax Act, 1961 (for short, 'the Act'). Subsequently, case was taken up for scrutiny and notice under section 143 (2) of the Act was served on the assessee. Since the assessee was unable to furnish the information sought, the Assessing Officer finalised ex parte assessment under section 144 of the Act, which was upheld by the CIT(A). The Tribunal allowed the appeal of the assessee. The Tribunal has given following reasons in support of its conclusion:-

- (i) Notices which were alleged to have not been complied with were not properly served;
- (ii) Advocate for the assessee has been appearing before the ITO and relevant information was available on record.
- (iii) Clubbing of income of the assessee to the income of the other vends being run in the same name was not justified. The other vends were different firms and had different licences;
- (v) Non-appearance of the partners before the ITO was not relevant consideration for deciding profit sharing ratio and since existence of four partners in their capital contributions was on record, the profit sharing ratio as per partnership deed should have been accepted;
- (vi) Additions to trading account by clubbing Income of the assessee with other vends was not justified;
- (vii) Trading results were supported by stock register and GP rate declared by the assessee at 1.35% could not be held to be low, addition to trading account was not justified;
- (viii) Since other vends which were sought to be clubbed were separate firms, additions made on account of

undisclosed investments was not justified.

Learned counsel for the revenue submitted that the Tribunal was not justified in not referring the questions of law which arose from its order. The Tribunal has held its findings to be findings of fact not giving rise to any question of law.

We have perused the findings of the Tribunal briefly indicated herein above. We are in agreement with the view taken by the Tribunal that the findings recorded are findings of fact and do not give rise to any question of law.

Accordingly, this petition is dismissed.

(Adarsh Kumar Goel)
Judge

October 30, 2006
'gs'

(Rajesh Bindal)
Judge